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20995 7590 06/13/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER ERB, NATHAN	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

**Application No.**

10/070,265

**Applicant(s)**

NISHIYAMA, KOHEI

**Examiner**

Nathan Erb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Response to Arguments***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Applicant's response to Office action was received on March 8, 2007.
3. In response to applicant's amendment of the claims, the objections to claims 1-8 from the previous Office action are hereby withdrawn. Note, however, the new objections to new claims 13 and 14 below in this Office action.
4. In response to applicant's amendment of the claims and arguments regarding the rejections of the claims under 35 U.S.C. 112, second paragraph, from the previous Office action, all of the rejections of the claims under 35 U.S.C. 112, second paragraph, from the previous Office action are hereby withdrawn, except for one which appears below in this Office action. The one remaining 35 U.S.C. 112 rejection was not remedied in applicant's response to the previous Office action.
5. In response to applicant's amendment of the claims, the rejections of the amended claims have been correspondingly amended in this Office action below.
6. In regards to the rejections under 35 U.S.C. 102, applicant first argues that Examiner is incorrect in stating that a computer being customized is a commodity under development. In support of this argument, applicant points out that Henson implies that lead time for the customized computers may be three weeks or less and that three weeks would not be enough time to develop a computer according to customer's answers. Rather, applicant characterizes the customized computers of Henson as having already been developed and merely being assembled

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according to customer instructions. Applicant further notes that the customization system of Henson is able to warn customers when specifications selected by the user are not compatible. Applicant reasons, therefore, that the computers cannot be considered under development because the parts of the computer have already been manufactured, with the compatibility between different parts having already been determined.

In response to this argument, Examiner disagrees. Examiner believes that the customizable computers of Henson can be considered to be commodities under development for the following reasons. First, in view of Figures 3A, 3B, 4, and 5, we see that Henson discloses at least eighteen parameters of a computer that can be configured: memory, hard drive, monitor, video card, CD-ROM drive, sound card, speakers, storage products, operating system, bundled software, modem, network card, keyboard, service, printers, scanners, power protection, and software and accessories. Even if each parameter were only allowed to vary between two possible choices, that would still result in  $2^{18}$ , or 262,144, possible computer configurations. Even if some of these configurations are not presented due to compatibility constraints, there is still a substantial potential for a multitude of possible configurations. Furthermore, the number of possible configurations increases even further if more parameters are added or if additional choices are offered for a given parameter. Thus, it is quite possible for a customer to customize a computer which has never actually been specifically specified or built before; therefore, such a computer could not have been previously developed. While three weeks may seem to be a short time span for product development, where product components are modular, easily assembled, and assembled using a process designed for easy customizability, it is certainly not inconceivable. Regarding applicant's note concerning the known compatibility of parts, it is not

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necessary that every possible computer configuration be built or even specifically considered for the invention of Henson to be able to provide compatibility warnings. For example, it may be known that a particular item of software requires a certain amount of memory to be substantially functional on a given computer system, so a compatibility warning could be given for any of some multitude of possible configurations wherein the amount of memory is below that required threshold. In such a case, it would not be necessary to have built and tested, or even specifically specified, every possible computer configuration to provide such a warning. Therefore, applicant's argument here is not persuasive.

7. In regards to the rejections of the claims under 35 U.S.C. 102, applicant next makes two arguments which both reference the portion of claim 1 amended in this most recent amendment. Such portion adds the element/limitation of "wherein said answer provides quantitative information regarding the future demand of the commodity under development." In response to the amendment of the claims, Examiner has correspondingly modified his rejections of the claims. Examiner believes these modified rejections appropriately address the element/limitation that has been added to claim 1. See the claim rejections below in this Office action for further details.

8. Applicant next argues against the rejection of claim 5. Applicant argues that Tavor et al. cannot be reasonably combined with Henson because, if users were allowed to choose the price in the method of Henson, users would always choose the lowest price. Examiner disagrees. Note that the context in which "choosing a price" is disclosed in Tavor et al. is that of choosing a proposed price for negotiation, not a final price (see Tavor et al., column 2, lines 16-20: "The system frequently asks how much the user is willing to pay for the product. Based on the user's

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input, the system may accept the offer or, after one or more unacceptably low inputs from the user, may alternatively end the process of negotiation). Therefore, if such an element/limitation were combined with Henson, the user would not necessarily choose the lowest price because the seller may not accept that price and the user may not then successfully purchase the item.

Therefore, applicant's argument is not persuasive with respect to this issue.

Applicant next argues that by combining Henson with Tavor et al., the essence of the method of Tavor is lost. Examiner disagrees. As stated above, the "choosing a price" limitation in the context of Tavor et al. is equivalent to making a price offer, as opposed to setting one's own final purchase price. Therefore, there is still an element of negotiation in that the seller may or may not accept the user's offer. Thus, the essence of the method of Tavor et al. is not lost, and applicant's argument is not persuasive with respect to this issue.

Applicant next argues that combining Henson with Tavor et al. results in the loss of the motivation of users of Tavor et al. to provide a reasonable price, because negotiations of the price can be terminated if the suggested price is too low. Examiner disagrees. As discussed above, the "choosing a price" limitation in the context of Tavor et al. is equivalent to making a price offer, as opposed to setting one's own final purchase price. Therefore, in the combination of Henson and Tavor et al., a user would be choosing a price offer to make, not mandating the final selling price. A price OFFER may or may not be accepted by the seller, because it is only an offer at that point. Therefore, the user would still be motivated to provide a reasonable price, because the sale may not occur if the price is too low. Thus, applicant's argument is not persuasive with respect to this issue.

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9. With respect to the prior art rejection of claim 7, applicant argues that it would be undesirable to combine Henson and Van Horn et al. Applicant provides three reasons for this conclusion. First, combining Van Horn et al. would eliminate the ability of a user to choose the user's exact desired product specifications. Second, combining Van Horn et al. would increase lead time. Third, combining Van Horn et al. would cause business to be lost when critical mass is not attained. Examiner disagrees that combining Henson and Van Horn et al. would be undesirable. First, combining Van Horn et al. would not eliminate the ability of a user to choose an exact desired product specification. The user who originally specifies a product that is to be the object of price offers from multiple different users would still be choosing that user's exact desired product specifications. Second, while combining Van Horn et al. may increase lead time, the main focus of Henson's method is the ability to choose a particular exact configuration, not the reduction of lead time. In addition, the positive effect of being able to sell the same configuration to multiple users may well outbalance any negative effect on lead time. Third, critical mass is typically established by the seller and can be the sales volume at which the starting [that is, the highest possible] price is justified (see Van Horn et al., column 6, lines 4-7: "Critical Mass: The volume of acceptable offers necessary before any purchase offers will be accepted. The critical mass may be specified by a supplier. It may also be the sales volume at which the starting co-op price is justified"). Since the seller can control the critical mass value in Van Horn et al., having a critical mass cannot be disadvantageous because the seller can always reduce the critical mass value if the seller believes it is causing business to be lost. In addition, since the critical mass value may specify the sales volume at which the starting [that is, the highest possible] price is justified, the seller may actually NOT want the sales where volume is

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below the critical mass because that may be a volume at which the seller might lose money for processing those orders. Therefore, applicant's arguments are not persuasive with respect to this issue.

Next, applicant argues that it would be non-obvious to combine the reference of Creese with Van Horn et al. and Henson because it would be undesirable to incorporate a pricing mechanism in the method of Henson that would require waiting for other users to indicate their intent to purchase computers with specific specifications. As was discussed above, while combining Van Horn et al. may increase lead time, the main focus of Henson's method is the ability to choose a particular exact configuration, not the reduction of lead time. In addition, the positive effect of being able to sell the same configuration to multiple users may well outbalance any negative effect on lead time. Therefore, applicant's arguments are not persuasive with respect to this issue.

Next, applicant argues that claim 7 does not restrict commodity prices to be the same price, yet the method of Creese implies that all commodities are sold at the same price. Claim 7 does not incorporate limitations which specify that all commodities are sold at the same price, but it also does not incorporate limitations which specify that not all commodities are sold at the same price. Therefore, the claim covers both cases, so the rejection is appropriate, and applicant's argument is not persuasive with respect to this issue.

Finally, applicant argues that claim 7 addresses the development of new products, while the products involved in the method of Henson are already developed. Examiner disagrees and addressed this issue in section 6 above. Therefore, applicant's argument is not persuasive with respect to this issue.

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10. In response to the rejection of claim 8 over the prior art, applicant argues that it would be non-obvious to combine Tavor et al. because, by integrating an interactive process to determine the price, the time of purchasing a computer described in the method of Henson is further extended. In response, while combining Tavor et al. may increase lead time, the main focus of Henson's method is the ability to choose a particular exact configuration, not the reduction of lead time. In addition, the positive effects of allowing more flexible pricing may well outbalance any negative effect on lead time. Therefore, applicant's arguments are not persuasive with respect to this issue.

In addition, applicant argues that it would be non-obvious to incorporate the method of Tavor et al. to produce claim 8, due to differences in intent. Examiner responds that the motivation of the prior art and the motivation of the applicant for combining a limitation need not be the same for a valid rejection under 35 U.S.C. 103. Therefore, applicant's arguments are not persuasive with respect to this issue.

11. Applicant argues against the rejection of claims 9 and 11 under 35 U.S.C. 103. First, applicant argues that Van Horn et al. does not disclose "receiving, from said plurality of user terminals, votes concerning the specifications and image information displayed on said Web page." In the rejections, Examiner cited that Van Horn et al. discloses "receiving, from said plurality of user terminals, votes concerning information displayed on said Web page" (column 4, lines 11-23; column 10, lines 37-46; column 3, lines 59-62) and "wherein information is specifications" (column 4, lines 11-23) while Matsuzaki et al. discloses "wherein information is image information" (column 11, line 49, through column 12, line 21). In combination, the references do disclose "receiving, from said plurality of user terminals, votes concerning the

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specifications and image information displayed on said Web page.” Applicant argues that the received votes of Van Horn et al. are not votes concerning the specifications because the voters in Van Horn et al. are merely expressing interest in one particular product which happens to include specific specifications, not expressing interest in specific specifications of a more general product. Examiner replies that the language “votes concerning the specifications” is broad enough to include an indication of interest in a product having particular specifications, like the particular style of wristwatch discussed in column 4, line 17, of Van Horn et al. A favorable vote for a product with particular specifications is a vote concerning the specifications because the specifications are part of the product being voted on. Therefore, applicant’s arguments are not persuasive with respect to this issue.

Next, applicant argues that Van Horn et al. and Matsuzaki et al. cannot be combined to produce claims 9 and 11 because the users in Van Horn et al. do not vote on any information (specifications or image information) but merely vote on a product characterized by specific specifications or image information. Examiner disagrees, based on the argument in the previous paragraph.

Next, applicant argues that one would be unmotivated to combine Van Horn et al. and Matsuzaki et al. because neither the method of Van Horn et al. nor Matsuzaki et al. describe how the types of image information that would be voted on are decided. However, how the types of image information that would be voted on are decided is not a limitation of claim 9 or claim 11. Therefore, for the rejection of claims 9 and 11 under 35 U.S.C. 103 to be valid, it is not necessary for the references to disclose how the types of image information that would be voted on are decided.

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Finally, applicant argues that neither Van Horn et al. nor Matsuzaki et al. disclose the newly added limitation of “receiving, from said plurality of user terminals, design preference information regarding the specifications displayed on said Web page.” Note that Examiner has correspondingly amended the rejection of claims 9 and 11 below in this Office action such that Henson is used to disclose that newly added limitation. See below in this Office action for details. Therefore, applicant’s arguments are not persuasive with respect to this issue.

12. Applicant argues against the rejection of claims 10 and 12 under 35 U.S.C. 103. First, applicant argues that the rejection is inappropriate because Van Horn et al. features all buyers paying the same product price and focuses on the number of units sold on the condition that all purchasers buy the commodity at the same price. However, the language of claims 10 and 12 does not exclude an invention with such characteristics. Therefore, applicant’s arguments are not persuasive with respect to this issue.

Applicant also argues that Van Horn et al. does not disclose the newly added limitation of “in order to determine financial risk regarding the production of the commodity.” Examiner disagrees. The difference between Examiner and applicant on this issue appears to be the definition of the word “production.” Examiner considers it possible in Van Horn et al. that a product is developed enough to be described for selling to an online buying group, yet without all of the units to be ultimately sold to the buying group having already been produced. Indeed, Van Horn et al. does not require the maximum number of products to be sold to a buying group under its method to be already produced before offering the product for sale to the buying group. Therefore, in some cases, orders may be obtained for a particular number of units of an item to be sold to a buying group using the method of Van Horn et al., with the items afterward being

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produced to fill the already-existing orders. In such cases, Van Horn et al. determines financial risk regarding the production of the commodity because calculating demand forecast and planned selling price allow the seller to know the expected revenue from the production, thereby giving the seller an indication of financial risk. In other words, Van Horn et al. already would have the order quantity and price before production, so it can estimate the risk of producing items to fill those orders. Therefore, applicant's arguments are not persuasive with respect to this issue.

### ***Claim Objections***

13. Claims 13-14 are objected to because of the following informalities:

- a. In the first line of claim 13, please replace the word "A" with --The--.
- b. In the first line of claim 14, please replace the word "A" with --The--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

14. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **Claim 12**, claim 12 recites the limitation "the answer recording file" in the ninth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

15. Claims 1-4, 6, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henson, U.S. Patent No. 6,167,383, in view of Van Horn et al., U.S. Patent No. 6,631,356 B1.

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As per **Claim 1**, Henson discloses:

- a system (column 1, lines 1-3; the apparatus here is a system);
- for collecting commodity specifications (column 2, line 61, through column 3, line 12; the commodity here is a computer; the specifications are the options selected by the user);
- related customer information (column 2, line 61, through column 3, line 12; the related customer information is the payment and delivery information);
- fundamental information presenting mechanism for presenting fundamental information concerning a commodity under development to an answerer (column 4, lines 36-52; the commodity is a computer; a computer being customized is a commodity under development; the fundamental information is the "product information for the particular product");
- answer recording mechanism for receiving and recording an answer from the answerer after said fundamental information is received (column 2, line 61, through column 3, line 12; column 4, lines 36-52; the answer is the options chosen by the user; the options chosen are stored in the cart).

Henson fails to disclose wherein said answer provides quantitative information regarding the future demand of the commodity under development. Van Horn et al. discloses wherein said answer provides quantitative information regarding the future demand of the commodity under development (column 2, line 40, through column 3, line 24; column 3, line 59, through column 4, line 24; column 4, line 58, through column 5, line 18; column 8, line 30, through column 9, line 57; column 12, line 59, through column 14, line 4; user inputs regarding new products they would like to purchase provide indication of quantity of demand for the new product and desired purchasing prices of users for the new product). It would have been obvious to one of ordinary

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skill in the art at the time of applicant's invention to modify the invention of Henson such that said answer provides quantitative information regarding the future demand of the commodity under development, as disclosed by Van Horn et al. Motivation is provided by Van Horn et al. in that such information could allow a business entity to determine if sufficient buyer interest exists to manufacture a product and to identify future buyers of the new product (column 2, line 40, through column 3, line 24; column 3, line 59, through column 4, line 24; column 4, line 58, through column 5, line 18; column 8, line 30, through column 9, line 57; column 12, line 59, through column 14, line 4).

As per **Claim 2**, Henson further discloses: wherein the answer is an answer concerning desired commodity specifications (column 4, lines 36-52; since both possible limitations for the answer are not simultaneously required, an answer concerning a wish to purchase a commodity having said presented specifications does not need to be addressed; the commodity here is a computer; the commodity specifications are the set of customization options chosen by the customer).

As per **Claim 3**, Henson further discloses: a commodity specification presenting mechanism for presenting, to an answerer, commodity specification information related to a price (Figures 3A, 3B, and 3C; column 6, lines 18-30; since both possible limitations for commodity specifications are not simultaneously required, commodity specifications corresponding to the answer does not need to be addressed).

As per **Claim 4**, Henson further discloses: wherein the fundamental information concerning the commodity under development contains a menu prepared for each element of specifications of the commodity under development, which allows an answerer to return an answer indicating the desired commodity specifications through a selection from said menu (Figures 3A, 3B, and 3C; column 6, lines 18-30; a computer being customized is a commodity under development).

As per **Claim 6**, Henson further discloses: wherein presentation of the information and reception of the answer are performed by utilizing a bidirectional communication system that uses a computer (column 4, line 53, through column 5, line 5; an Internet store utilizes a bidirectional communication system that uses a computer).

As per **Claim 13**, Henson fails to disclose wherein said answer decreases the investment risk associated with the development of the commodity. Van Horn et al. further discloses wherein said answer decreases the investment risk associated with the development of the commodity (column 4, lines 11-24; column 9, lines 45-57; evidence of demand decreases investment risk). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 1 such that said answer decreases the investment risk associated with the development of the commodity, as disclosed by Van Horn et al. Motivation is provided in that it was well-known to one of ordinary skill in the art at the time of applicant's invention that businesses generally prefer their business activities to have lower risk of losses.

As per Claim 14, Henson further discloses wherein said answer involves the answerer in the development of the commodity (column 2, line 61, through column 3, line 12; column 4, lines 36-52).

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henson in view of Van Horn et al. in further view of Tavor et al., U.S. Patent No. 6,553,347 B1. Henson further discloses: wherein the commodity specification information presented to the answerer contains a plurality of choices (Figures 3A, 3B, and 3C; column 6, lines 18-30). Henson and Van Horn et al. fail to disclose wherein a user can input his or her choice for expected selling price. Tavor et al. discloses wherein a user can input his or her choice for expected selling price (column 2, lines 9-20; user makes price offers). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 1 such that a user can input his or her choice for expected selling price, as disclosed by Tavor et al. Tavor et al. provides motivation in that allowing a user to input his or her choice for price can be part of a process that allows for the negotiation of a price between parties (column 2, lines 9-20).

17. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henson in view of Van Horn et al. in further view of Creese, Robert C., "Break-Even Analysis - The Fixed Quantity Approach," Transactions of AACE International, 1993, pp. A.1.1-A.1.7. Henson fails to disclose wherein the computer is provided with a commodity price calculating mechanism, which provides the answerer with a commodity price calculated on the basis of volume of items to be sold and a cumulative number of purchase candidates. Van Horn et al. discloses wherein the

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computer is provided with a commodity price calculating mechanism, which provides the answerer with a commodity price calculated on the basis of volume of items to be sold and a cumulative number of purchase candidates (column 6, lines 4-7; column 8, line 31, through column 9, line 44; calculates price based on critical mass [volume of items to be sold] and number of purchase candidates). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 6 such that the computer is provided with a commodity price calculating mechanism, which provides the answerer with a commodity price calculated on the basis of volume of items to be sold and a cumulative number of purchase candidates, as disclosed by Van Horn et al. Van Horn et al. provides motivation in that since calculating price for the user allows the user to watch the price decrease as number of buyers increases, calculating price for the user encourages buyers to recruit additional new buyers (column 9, lines 11-22).

Henson and Van Horn et al. fail to disclose wherein volume of items to be sold is based on manufacturing cost. Creese discloses wherein volume of items to be sold is based on manufacturing cost (sections A and B; in the reference, the volumes of items needed to be sold for various break-even points are calculated using manufacturing cost). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 6 and as modified above in this rejection such that volume of items to be sold is based on manufacturing cost, as disclosed by Creese. Creese implicitly provides motivation in that basing the volume of items to be sold on manufacturing cost allows one to meet a desired break-even point (sections A and B).

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18. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henson in view of Van Horn et al. in further view of Creese in further view of Tavor et al. Henson and Creese fail to disclose the commodity price calculating mechanism. Van Horn et al. further discloses the commodity price calculating mechanism (column 8, line 31, through column 9, line 44; calculates price and displays to buyers). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 7 such that it includes a commodity price calculating mechanism, as disclosed by Van Horn et al. Van Horn et al. provides motivation in that since calculating price for the user allows the user to watch the price decrease as number of buyers increases, calculating price for the user encourages buyers to recruit additional new buyers (column 9, lines 11-22).

Henson and Van Horn et al. fail to disclose a function of performing a comparison operation by comparing the manufacturing cost with an expected amount of sales obtained by multiplying the number of units to be sold by price. Creese further discloses a function of performing a comparison operation by comparing the manufacturing cost with an expected amount of sales obtained by multiplying the number of units to be sold by price (sections A and B; since the only prices to be paid by buyers in applicant's application are "desired purchasing prices" [that is, prices agreed to by the buyers], any prices to be paid in reference to applicant's application can be referred to as "desired purchasing prices"; in the reference, in equation 3, the left side of the equation [price times number of units to be sold] is compared with the sum of costs). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 7 and as modified above in this rejection such that it performs a function of performing a comparison

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operation by comparing the manufacturing cost with an expected amount of sales obtained by multiplying the number of units to be sold by price, as disclosed by Creese. Creese implicitly provides motivation in that comparing manufacturing cost with an expected amount of sales allows for a break-even analysis to be performed (sections A and B).

Henson and Van Horn et al. fail to disclose it not being expected as a result of the comparison operation that an appropriate amount of profit will be generated. Creese further discloses it not being expected as a result of the comparison operation that an appropriate amount of profit will be generated (sections A, B, C, and D; this is simply the case where a process in a break-even analysis has not reached the break-even at required return point disclosed by the reference). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 7 and as modified above in this rejection such that it considers when it is not expected as a result of the comparison operation that an appropriate amount of profit will be generated, as disclosed by Creese. Creese provides motivation in that performing such a break-even analysis allows one to evaluate the profitability of operations (section D).

Henson and Creese fail to disclose a function of transmitting, to each purchase wishing person, a message showing that an expected amount of sales falls below a required amount. Van Horn et al. further discloses a function of transmitting, to each purchase wishing person, a message showing that an expected amount of sales falls below a required amount (column 6, lines 4-7; column 9, lines 11-22; claim 12; a message indicating the number of acceptable offers necessary to reach critical mass would show when an expected amount of sales falls below a required amount, prior to the notification of claim 12). It would have been obvious to one of

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ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 7 and as modified above in this rejection such that it performs a function of transmitting, to each purchase wishing person, a message showing that an expected amount of sales falls below a required amount, as disclosed by Van Horn et al. Van Horn et al. provides motivation in that notifying a user when expected sales fall below a required amount would encourage users to recruit additional users to increase expected sales (column 4, lines 3-11).

Henson, Van Horn et al., and Creese fail to disclose a message requesting the user to increase the desired purchasing prices. Tavor et al. discloses a message requesting the user to increase the desired purchasing prices (column 2, lines 9-20; column 4, lines 20-40; column 6, lines 13-34; column 7, lines 9-24; column 9, lines 12-23; negotiation system will reject user price offers that are too low and make counteroffers that are higher; those responses are requests for the user to increase the desired purchasing price). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 7 and as modified above in this rejection such that it sends a message requesting the user to increase the desired purchasing prices, as disclosed by Tavor et al. Tavor et al. provides motivation in that sending a message requesting the user to increase a price offer is part of a process that allows for the negotiation of price between parties (column 2, lines 9-20; column 4, lines 20-40; column 6, lines 13-34; column 7, lines 9-24; column 9, lines 12-23).

Henson, Van Horn et al., and Tavor et al. fail to disclose a function of performing a comparison operation by comparing an expected amount of sales calculated through the multiplication on the basis of the desired purchasing prices with a manufacturing cost. Creese

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further discloses a function of performing a comparison operation by comparing an expected amount of sales calculated through the multiplication on the basis of the desired purchasing prices with a manufacturing cost (sections A and B; since the only prices to be paid by buyers in applicant's application are "desired purchasing prices" [that is, prices agreed to by the buyers], any prices to be paid in reference to applicant's application can be referred to as "desired purchasing prices"; in the reference, in equation 3, the left side of the equation [price times number of units to be sold, that is, an expected amount of sales] is compared with the sum of costs; the desired purchasing prices being increased desired purchasing prices was addressed in the Tavor reference earlier in this rejection). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 7 and as modified above in this rejection such that it performs a function of performing a comparison operation by comparing an expected amount of sales calculated through the multiplication on the basis of the desired purchasing prices with a manufacturing cost, as disclosed by Creese. Creese implicitly provides motivation in that comparing manufacturing cost with an expected amount of sales allows for a break-even analysis to be performed (sections A and B).

Henson, Van Horn et al., Creese, and Tavor et al. fail to disclose wherein the number of units to be sold is equal to the cumulative number of purchase candidates. However, that element/limitation was well-known in the art at the time of applicant's invention (on pp. 11-13 of applicant's specification, applicant's invention appears to assume that each purchaser will only purchase one item; under those conditions, it is well-known that a number of buyers is equal to a number of items to be sold, so the number of units in Creese's calculations is interchangeable with

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a number of buyers in that case). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Henson as modified in the rejection for claim 7 and as modified above in this rejection such that the number of units to be sold is equal to the cumulative number of purchase candidates, as was well-known in the art at the time of applicant's invention. Motivation is provided in that it was well-known to a person of ordinary skill in the art at the time of applicant's invention that recognizing relationships between values allows values to be substituted for each other in mathematical processes.

19. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Horn et al. in view of Matsuzaki et al., U.S. Patent No. 5,357,439, in further view of Henson.

As per **Claims 9 and 11**, Van Horn et al. discloses:

- a commodity plan idea presenting method (column 4, lines 11-23);
- which is applied to a server (column 6, lines 48-52);
- of a proposal type (column 4, lines 11-23; the server in the reference presents proposed products to users);
- that is connected to a network (column 10, lines 37-46; the Internet is a network);
- is accessible from a plurality of user terminals (column 3, lines 59-62; column 10, lines 37-46);
- writing a commodity idea into a fundamental information recording file as information (column 4, lines 11-23; idea would have to have been recorded in some sort of file in order to have been presented later);

- generating a Web page from said written information (column 4, lines 11-23; column 10, lines 37-46; presents ideas to users to gauge demand; "browser" and "HTTP" imply invention communicates through Web pages);

- arranging the generated Web page so that the Web page is accessible from the plurality of user terminals (column 10, lines 37-46; column 3, lines 59-62; "browser" and "HTTP" imply invention communicates through Web pages);

- receiving, from said plurality of user terminals, votes concerning information displayed on said Web page (column 4, lines 11-23; column 10, lines 37-46; column 3, lines 59-62; an expression of buyer interest would be a vote; "browser" and "HTTP" imply invention communicates through Web pages);

- registering vote results in an answer recording file (column 4, lines 11-23; an expression of buyer interest would be a vote; votes over time would have to be registered in some type of file for total demand to be gauged);

- a computer-readable recording medium (claims 31 and 32);

- which records a program (claims 31 and 32);

- wherein information is specifications (column 4, lines 11-23; the descriptive information of the particular watch style would be specifications).

Van Horn et al. fails to disclose wherein information is image information. Matsuzaki et al. discloses wherein information is image information (column 11, line 49, through column 12, line 21). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Van Horn et al. such that information is image information, as disclosed by Matsuzaki et al. Matsuzaki et al. provides motivation in that displaying image

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information to a user allows the user to determine if he or she wishes to purchase the item (column 11, line 49, through column 12, line 21).

Van Horn et al. and Matsuzaki et al. fail to disclose receiving, from said plurality of user terminals, design preference information regarding the specifications displayed on said Web page. Henson discloses receiving, from said plurality of user terminals, design preference information regarding the specifications displayed on said Web page (Figures 3A, 3B, and 3C; column 2, line 61, through column 3, line 11; column 3, lines 36-44; column 6, lines 18-30; web page serves multiple customers). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Van Horn et al. as modified above in this rejection such that it receives, from said plurality of user terminals, design preference information regarding the specifications displayed on said Web page, as disclosed by Henson. Motivation is provided by Henson in that such communication allows customers to specify what attributes they want in a product for purchase (Figures 3A, 3B, and 3C; column 2, line 61, through column 3, line 11; column 3, lines 36-44; column 6, lines 18-30).

20. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Horn et al. in view of Matsuzaki et al.

As per **Claims 10 and 12**, Van Horn et al. discloses:

- a method of making a reservation for a commodity over a network (column 8, line 31, through column 9, line 44; the purchases are reservations);

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- which is applied to a reservation server (column 8, line 31, through column 9, line 44; column 6, lines 48-52; it is a reservation server because it is used to make reservations [purchases]);

- that is connected to the network (column 10, lines 37-46; the Internet is a network);

- is accessible from a plurality of user terminals (column 3, lines 59-62; column 10, lines 37-46);

- generating a Web page from commodity information for each lot read from a fundamental information file (column 11, lines 29-42; column 10, lines 37-46; column 14, lines 31-32; column 14, top table; "browser" and "HTTP" imply invention communicates through Web pages; use of databases implies information is stored in files);

- arranging the generated Web page so that the Web page is accessible from the plurality of user terminals (column 10, lines 37-46; column 3, lines 59-62; "browser" and "HTTP" imply invention communicates through Web pages);

- receiving, from said plurality of user terminals, provisional reservations including desired purchasing prices that are determined by referring to the information displayed on said Web page (column 8, line 31, through column 9, line 44; column 3, lines 59-62; column 10, lines 37-46; the provisional reservations are the offers; users make offers in response to product information; "browser" and "HTTP" imply invention communicates through Web pages);

- registering each said provisional reservation in an answer recording file (column 14, lines 31-32; column 14, lines 51-52; column 14, bottom table; the provisional reservations are the offers; use of databases implies information is stored in files);

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- calculating demand forecast and a planned selling price from said answer recording file in order to determine financial risk regarding the production of the commodity, and sending purchase information to each person having made a provisional reservation by answering said desired purchasing price that satisfies a condition of said planned selling price (column 2, line 40, through column 3, line 24; column 4, line 59, through column 5, line 18; column 8, line 31, through column 9, line 44; demand forecast is the volume of units to be sold, calculated as part of determining final price; planned selling price is the final price; demand forecast and planned selling price are calculated from offer information, which is stored in a database; use of databases implies information is stored in files; purchase information is notification of acceptance and product shipment; the provisional reservations are the offers; condition of planned selling price is that the desired purchasing price must be greater than or equal to the planned selling price; calculating demand forecast and planned selling price allow the seller to know the expected revenue from the production, thereby giving the seller an indication of financial risk);

- a computer-readable recording medium (claims 31 and 32);
- which records a program (claims 31 and 32);
- wherein information is specifications and price (column 11, lines 5-42; here, the specifications are the general product information presented to the buyer; the price is the current price presented to the buyer).

Van Horn et al. fails to disclose wherein information is image information. Matsuzaki et al. discloses wherein information is image information (column 11, line 49, through column 12, line 21). It would have been obvious to one of ordinary skill in the art at the time of applicant's

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invention to modify the invention of Van Horn et al. such that information is image information, as disclosed by Matsuzaki et al. Matsuzaki et al. provides motivation in that displaying image information to a user allows the user to determine if he or she wishes to purchase the item (column 11, line 49, through column 12, line 21).

21. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Horn et al. in view of Matsuzaki et al. in further view of Fisher et al., U.S. Patent No. 6,243,691 B1.

As per Claims 15-16, Van Horn et al. and Matsuzaki et al. fail to disclose wherein the planned selling price is not the same for all people having made provisional reservations. Fisher et al. discloses wherein the planned selling price is not the same for all people having made provisional reservations (column 9, lines 32-65; column 11, lines 14-54). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Van Horn et al. as modified in the rejection for claims 10 and 12 such that the planned selling price is not the same for all people having made provisional reservations, as disclosed by Fisher et al. Motivation is provided by Fisher et al. in that having varying selling prices allows selling prices to be kept as high as possible to the seller's benefit (column 9, lines 32-65; column 11, lines 14-54).

### *Conclusion*

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. **Examiner's Note:** Examiner has cited particular portions of the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Erb whose telephone number is (571) 272-7606. The examiner can normally be reached on Mondays through Fridays, 8:30 AM to 5 PM.

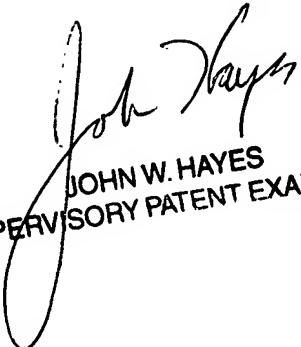
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nathan Erb  
Examiner  
Art Unit 3628

nhe



JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER